

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she asserted that recovery of the overpayment was against equity and good conscience and OWCP's decision did not explain why it denied her request to waive recovery of the overpayment. She requested further information to understand how OWCP determines that an overpayment should be waived. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$54,446.67, for the period February 9, 2016 through February 29, 2020, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, without appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$480.50 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On September 8, 2015 appellant, then a 62-year-old chemist, filed an occupational disease claim (Form CA-2) alleging that she developed degenerative hand conditions due to factors of her federal employment, including repetitive duties. She indicated that she first became aware of her condition on October 5, 2014, and realized its relationship to her federal employment on November 12, 2014. Appellant's retirement system coverage was noted as Federal Employees Retirement System (FERS). She retired effective September 26, 2015.

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome and lesion of the right ulnar nerve. It paid her wage-loss compensation on the supplemental rolls from February 9, 2016 and on the periodic rolls as of March 5, 2017.

On February 24, 2020 OWCP received from SSA a January 27, 2020 FERS/SSA dual benefits calculation form, which indicated that appellant had been in receipt of SSA age-related retirement benefits since May 2015. The form indicated SSA benefit rates with and without a FERS offset. Beginning May 1, 2015, appellant's SSA rate with FERS was \$1,603.00 and without FERS was \$634.00; beginning January 1, 2016, appellant's SSA rate with FERS was \$1,627.00 and without FERS was \$634.00; beginning December 1, 2016, appellant's SSA rate with FERS was \$1,632.00 and without FERS was \$636.00; beginning December 1, 2017, February 1, 2018, and March 1, 2018, appellant's SSA rate with FERS was \$1,664.00 and without FERS was \$648.00; beginning December 1, 2018, appellant's SSA rate with FERS was \$1,711.00 and without FERS was \$666.00; beginning April 20, 2019, appellant's SSA rate with FERS was \$2,143.00 and without FERS was \$666.00; beginning June 1, 2019, appellant's SSA rate with

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional evidence on appeal and OWCP received additional evidence following the April 28, 2020 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FERS was \$2,142.50 and without FERS was \$666.50; and beginning December 1, 2019, appellant's SSA rate with FERS was \$2,177.60 and without FERS was \$676.60.

OWCP completed a FERS offset calculation worksheet on March 9, 2020. It determined the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$54,446.67. This form indicated: during the period February 9 to November 30, 2016 appellant received an overpayment of \$9,689.93; from December 1, 2016 to November 30, 2017 \$11,984.84; from December 1, 2017 to January 31 2018 \$2,076.66; from February 1 to February 28, 2018 \$937.85; from March 1 to November 30, 2018 \$9,210.99; from December 1, 2018 to March 31, 2019 \$4,168.5; from April 1 to May 31, 2019 \$2,970.23; from June 1 to November 30, 2019 \$8,904.66; and from December 1, 2019 to February 29, 2020 \$4,503.00.

In a letter dated March 10, 2020, OWCP advised appellant that she had been receiving a prohibited dual benefit. It noted that the SSA had confirmed that a portion of her SSA age-related retirement benefits were attributed to her years of federal service as an employee under the FERS retirement program and that portion required an offset of her FECA compensation benefits, in the amount of \$1,385.54 every 28 days. OWCP indicated that, to account for her SSA offset, appellant's FECA wage-loss compensation would be adjusted to reflect a new net compensation amount of \$4,656.00 beginning March 1, 2020.

On March 10, 2020 OWCP issued a preliminary overpayment determination that appellant received an overpayment of compensation in the amount of \$54,446.67, because she concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits for the period February 9, 2016 through February 29, 2020. It explained that it had calculated the overpayment of compensation by determining the difference between appellant's SSA benefit rates with and without FERS for each period, and then multiplying that amount by the number of days in each period. OWCP further found that appellant was without fault in the creation of the overpayment, as she was not aware, nor could she reasonably have been aware, due to the complexity of SSA and FECA benefits administration that she had been paid compensation incorrectly. It requested that she complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. OWCP advised appellant that failure to submit the requested information within 30 days would result in the denial of waiver and no further request would be considered until the requested information was received. Additionally, it notified appellant that within 30 days of the date of the letter, she could request waiver of recovery of the overpayment based on the written record or a prerecoupment hearing.

On April 6, 2020 OWCP received appellant's request for waiver because she was found to be without fault in the creation of the overpayment. Appellant did not complete the Form OWCP-20. In an undated letter, she explained that she could not recall exact dates, but that she believed she applied for SSA retirement benefits in January 2016. Appellant learned that she could receive SSA disability instead of SSA age-related retirement benefits and requested that her SSA age-related retirement benefits be suspended. She then received SSA disability benefits as of March 2016. After her FECA benefits were approved, appellant informed SSA that she would like to refund the SSA disability benefits paid to her. After she turned 66 in April 2019, she inquired about full SSA age-related retirement benefits. Appellant submitted an August 11, 2016 letter from SSA which related that she was entitled to SSA disability benefits as of March 2016.

She submitted another April 12, 2017 SSA statement form wherein she certified that she had initially applied for and received SSA disability benefits in 2015. However, since FECA disability benefits were retroactively granted to March 2016, appellant requested that her SSA disability benefits be converted to retirement benefits as of the same March 2016 date. She also submitted another SSA statement form dated September 18, 2019 (p19) wherein she certified that the SSA notice dated August 11, 2016 found that she was eligible to receive monthly SSA disability benefits effective March 2016. Appellant further related that she understood that her SSA disability benefits were reduced by FECA workers' compensation benefits, therefore she elected to receive SSA age-related retirement benefits beginning May 2015 and continuously. She related that she understood her SSA age-related retirement benefits would not be reduced by her FECA benefits.

By decision dated April 28, 2020, OWCP finalized its preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$54,446.67, because the SSA/FERS offset was not applied to FECA wage-loss compensation payments for the period February 9, 2016 through February 29, 2020. It also found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because she had not completed and returned Form OWCP-20. OWCP required recovery of the overpayment by deducting \$480.50 from appellant's continuing compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.⁴ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁵

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁶ FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA age-related retirement benefits because

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁷

ANALYSIS -- ISSUE 1

The Board finds that appellant received an overpayment of compensation in the amount of \$54,446.67, for the period February 9, 2016 through February 29, 2020, for which she was not at fault, because she concurrently received FECA benefits and SSA age-related retirement benefits, without appropriate offset.

As noted, a claimant cannot receive both FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁸ According to the evidence received from SSA, appellant had received SSA age-related retirement benefits that were attributable to her own federal service from February 9, 2016 through February 29, 2020. Thus, the record establishes that she received an overpayment of FECA wage-loss compensation.⁹

In determining the amount of the overpayment, OWCP relied on evidence received from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. The SSA provided appellant's SSA benefit rates with FERS, and without FERS, for specific periods commencing February 9, 2016 through February 29, 2020. OWCP calculated the overpayment by determining the 28-day offset amount and then multiplying that amount by the number of days in each period. It provided to appellant its calculations for each relevant period based on the SSA worksheet and no contrary evidence was received. The Board has reviewed OWCP's calculation of benefits received by appellant for the period February 9, 2016 through February 29, 2020, and finds that an overpayment of compensation in the amount of \$54,446.67 was created.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹¹

Section 10.437 of FECA implementing regulations provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment of compensation would experience severe financial hardship attempting

⁷ FECA Bulletin No. 97-09 (February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁸ 20 C.F.R. § 10.421(d); *see L.W.*, Docket No. 20-0296 (issued October 26, 2020); *see also N.B., id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁹ *See R.M.*, Docket No. 19-1570 (issued June 1, 2020).

¹⁰ *See R.W.*, Docket No. 19-0334 (issued August 7, 2020); *D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹¹ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, and 10.437.

to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹²

Section 10.438 of the implementing regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹³ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

Although OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁵ Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.¹⁶

In its preliminary overpayment determination dated March 10, 2020, OWCP clearly explained the importance of providing the completed Form OWCP-20 and supporting financial documentation. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant, however, did not submit a completed Form OWCP-20 or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁷

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438, which was necessary to determine her eligibility of waiver, OWCP properly denied waiver of recovery of the overpayment of compensation in the amount of \$54,446.67.

¹² 20 C.F.R. § 10.437.

¹³ *Id.* at § 10.438(a); *see Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

¹⁴ *Id.* at § 10.438.

¹⁵ *Id.* at § 10.436.

¹⁶ *Id.* at § 10.438.

¹⁷ *See S.W.*, Docket No. 20-0544 (issued September 21, 2020); *S.M.*, *supra* note 7.

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of OWCP's regulations¹⁸ provides in pertinent part:

"When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as the error is discovered or his attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship."¹⁹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$480.50 from appellant's continuing compensation every 28 days.

OWCP provided appellant a Form OWCP-20 with its March 10, 2020 preliminary overpayment determination and advised her to submit supporting financial documentation with her completed form.²⁰ Appellant did not complete the Form OWCP-20 or provide the necessary financial information to report her income and expenses prior to the April 28, 2020 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²¹ When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.²² As appellant did not submit supporting financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that OWCP erred in directing recovery of the \$54,446.67 overpayment at the rate of \$480.50 every 28 days from appellant's continuing compensation payments.²³

CONCLUSION

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$54,446.67, for the period February 9, 2016 through February 29, 2020, for which she was without fault, as she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without appropriate offset. The Board

¹⁸ 20 C.F.R. § 10.441(a).

¹⁹ *Id.*; see *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

²⁰ *Id.* at § 10.438.

²¹ *Id.* at § 10.438(a); see *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²² See *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.3 (September 2018).

²³ See *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$480.50 from appellant's continuing compensation payments every 28 days.

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board